



Comptroller General
of the United States
Washington, D.C. 20548

BCK Kaniel

Decision

Matter of: Gel Systems, Inc.--Reconsideration
File: B-234283.2
Date: August 22, 1989

DIGEST

Request for reconsideration is denied where the protester does not demonstrate any errors of law or fact in our prior decision warranting its reversal.

DECISION

Gel Systems, Inc., requests that we reconsider our decision, Gel Sys., Inc., B-234283, May 8, 1989, 89-1 CPD ¶ 433, in which we denied its protest under request for proposals (RFP) No. N00600-89-R-0449, issued by the Naval Regional Contracting Center, Washington, D.C., on a "brand name or equal basis" for an electronic language learning system for use at the United States Naval Academy.

We deny the request for reconsideration.

In its protest, Gel principally alleged that the RFP's specifications (salient characteristics) were "written around" the brand name manufacturer, and, therefore, were restrictive of competition. However, the only specific example of the RFP's alleged restrictiveness that Gel provided was the requirement that users of the system be able to "mark" electronically at least two specific areas of the program for quick review, without the need to refer to the cassette tape counter.

In our decision, we noted that specifications based upon a particular product are not improper in and of themselves, and a protest that a specification is "written around" design features of a competitor's product fails to provide a valid basis for protest where the agency establishes that the specification is reasonably related to its minimum needs. See Repco, Inc., B-227642.3, Nov. 25, 1987, CPD ¶ 517. Concerning the requirement for a memory marking function, we found that the agency had offered reasonable explanations of its need for this specification since the feature is necessary for more efficient use of 50-minute

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class periods, enabling the instructor to jump quickly to portions of the audio cassette without wasting valuable class time searching. The protester failed to respond to the agency's stated rationale. In fact, the protester did not even attempt to rebut the agency's justification for this and other specifications, and we therefore found that the protester had failed to meet its burden of showing that the specifications were clearly unreasonable. Accordingly, we denied this protest ground.

In its request for reconsideration, Gel principally asserts that we failed to address "the most important issue raised by Gel"--that the agency improperly used a brand name or equal purchase description since adequate specifications were available and were in fact contained in the solicitation.

Our decision did not specifically address this contention because we did not need to resolve this matter. In its protest, Gel principally objected to the stated technical requirements of the solicitation as unduly restrictive. Subsequently, Gel did not submit a proposal by the closing date. In our decision, we found that these stated technical requirements reflected the agency's minimum needs. The fact that these technical requirements were expressed in the solicitation in terms of a purchase description and specifications (as opposed to specifications only as requested by the protester) did not appear to have any effect on the protester's capability or intention to compete under the RFP. Where, as here, the protester makes no showing that the purchase description used does not reflect the agency's needs, or that the nature of the purchase description has in some way excluded it from the competition, there is no basis on which to conclude that the use of a brand name or equal description was improper. See Julie Research Laboratories, Inc., B-218598, Aug. 20, 1985, 85-2 CPD ¶ 194.

Finally, Gel argues that our standard of review in a protest involving allegedly unduly restrictive specifications is "absurd" and that a protester has an "impossible burden" in such a protest. Gel flatly asserts that "it is a foregone conclusion that GAO will not question the minimum needs of an agency." According to the protester, our Office should question an agency's minimum needs and should abandon the view that generally procurement officials are in the best position to draft specifications that meet the minimum needs of the government. We decline to do so.

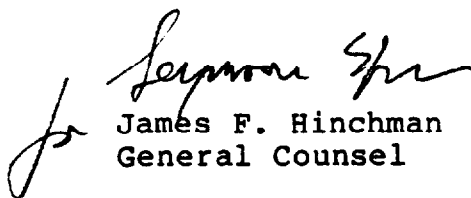
First, we will sustain such protests where the agency does not adequately justify its need for a specification.

See, e.g., Data-Team, Inc., B-233676, Apr. 5, 1989, 68 Comp. Gen. ___, 89-1 CPD ¶ 355; Economy Linen and Towel Service of Zanesville, Inc., B-229806, Mar. 2, 1988, 88-1 CPD ¶ 222; Altex Enterprises, Inc., 67 Comp. Gen. 185 (1988), 88-1 CPD ¶ 7. Second, concerning the proper standard of review in such protests, we agree with the statement of the General Services Board of Contract Appeals as follows:

"We cannot take issue with an agency's restrictions on competition in pursuit of legitimate agency requirements where those restrictions are rationally premised and reasonable. . . . We give more credence to those persons charged with the responsibility for making such discretionary judgments than we give to the opinions of vendors which have not clearly demonstrated greater knowledge of the Government's internal operations and needs."

Computervision Corp., GSBICA No. 8744-P, 87-1 BCA ¶ 19,553 (1987). Here, the record shows that we denied Gel's protest because the firm failed to support its assertions. In this regard, we have consistently stated that our Office will not conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of a protester's speculative statements or allegations. See McCollum and Assocs., B-232221, Nov. 10, 1988, 88-2 CPD ¶ 470. Thus, we reaffirm our view that a protester's unsupported and conclusory assertions that a solicitation's specifications are unduly restrictive do not provide a basis for overturning an agency's estimation of its needs.

Since Gel has not shown that our decision contains any error of fact or law, the request for reconsideration is denied.


James F. Hinchman
General Counsel